

APPEAL NO. 041897
FILED SEPTEMBER 16, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 13, 2004. The hearing officer resolved the disputed issue before her by determining that the _____, compensable injury of respondent (claimant herein) does extend to and include the left knee in addition to the low back. Appellant self-insured (carrier herein) appealed on factual sufficiency grounds. There is no response in the appeal file from claimant.

DECISION

We reverse and render.

Claimant testified that he sustained a compensable back injury on _____, when he slipped and fell at work. Claimant said he underwent surgical treatment to his lumbar spine. Even though he was treated for his injury, claimant said his right leg remained very weak. Claimant testified that his weak right leg had been causing him to fall. Claimant said his leg gave way and he fell against a toilet at home on January 4, 2004, and injured his left leg. There was medical evidence that claimant's right leg weakness was secondary to his surgery for his back injury and that this weakness caused him to fall and injure his left leg.

In Texas Workers' Compensation Commission Appeal No. 961055, decided July 19, 1996, the injured worker suffered a compensable back injury when she fell at work on (date of injury for Appeal No. 961055). The injured worker in that case stated, and the medical evidence indicates, that in late 1994 or early 1995 her right leg began giving way. Because of her problems with stumbling and falling, in July 1995 her doctor gave her a cane to use. On October 21st the injured worker stumbled while at home, catching herself by the arms, after which she began experiencing neck pain. There was medical evidence in that case that the injured worker fell because of the back and leg pain, sustaining a neck injury, and that "[t]here is a direct causal relationship between the back injury, the fall and the patient's cervical complaints." The hearing officer in that case determined that the compensable injury extended to the neck. The Appeals Panel reversed and rendered a decision that the injury did not extend to the neck. The Appeals Panel noted that factors that have been considered in this regard were whether there was a distinct, nonwork-related activity involved in the subsequent injury; whether the claimed subsequent injury was to a distinctly different body part; whether there was a lengthy period of time between the injury and the claimed subsequent injury; whether the compensable injury caused at most only a degree of weakening or lowered resistance; and whether there was a lack of reasonable medical probability establishing the necessary causation (as opposed to a doctor's "but for" analysis).

In this case, there was a long period of time between the compensable injury and the subsequent fall, the injury was to a different body part, and the subsequent fall was

attributed to claimant having a degree of weakening or lowered resistance. Appeal No. 961055, *supra*, is on point with the facts of the case before us. Accordingly, we conclude that the hearing officer erred and that we must reverse the hearing officer's decision regarding extent of injury. The subsequent injury is too remote to the initial injury to bring it within the definition of injury and it was not "a direct and natural" result of the earlier compensable injury. See Appeal No. 961055; see *also* Texas Workers' Compensation Commission Appeal No. 971849, decided October 20, 1997; Texas Workers' Compensation Commission Appeal No. 012996, decided January 22, 2002.

We reverse the hearing officer's determination that the compensable injury extends to the left knee and render a decision that the injury does not extend to the left knee.

According to information provided by carrier, the true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE)

Judy L. S. Barnes
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

DISSENTING OPINION:

I dissent in the present case. It is somewhat difficult to craft a dissent because I am unclear as to what the actual legal rationale of the majority is in the present case. The majority appears to say that they have found a case that they believe is factually similar to the present case and therefore it is necessary for this case to reach the same result as that case. Under this rationale, we should have reversed in numerous cases where the facts were essentially the same, but where the finders of fact reached contrary results. The reason, of course, that we affirm different fact finders who reach

opposite result when presented with similar facts is that it is the province of the fact finder to determine the credibility of the evidence and what weight to give the evidence. In the present case, the hearing officer did this and concluded that the claimant's injury did extend to the left knee. I think by reversing this conclusion we are simply invading the province of the hearing officer without even pretending to determine that the great weight and preponderance of the evidence is contrary to the decision of the hearing officer.

I certainly understand the importance of *stare decisis*. However, it seems to me that part of *stare decisis* is being able to articulate the underlying legal principles one is applying in like cases. I fail to appreciate what that principle is in the present case. To me the result in the present case flies in the face of Texas Workers' Compensation Commission Appeal No. 93414, decided July 5, 1993, and other cases in which we have held that the hearing officer may find that the injury extended to another body part when evidence shows that the compensable injury affected that body part due to the fact the compensable injury caused an altered gait. I do not see how one can hold that the effects from an altered gait can be compensable but the effects from a weakened limb cannot be. I note that the language cited by the majority attributes the reconciliation of the altered gait and weakened limbs cases to Texas Workers' Compensation Commission Appeal No. 93672, decided September 16, 1993. As the author of that case, it is abundantly clear to me that this case stands for the proposition that the question of whether a follow-on injury naturally flows from the compensable injury is a question of fact whether the follow-on injury is a result an altered gait or the result of a weakened limb. In fact 93672, *supra*, is cited for this proposition in scores of following Appeals Panel decisions. The problem with the present case is that the majority fails to analyze the present case as a question of whether the evidence sufficiently supported the hearing officer's decision, but instead seems to be saying that since an earlier Appeals Panel decision overturned the hearing officer's factual finding, we must do likewise in this case. To me this is no different from saying that we must reverse the decisions of a hearing officer who has ruled differently from another hearing officer if the facts of the two cases are similar. To me this is not *stare decisis*, but some other doctrine with which I am unfamiliar.

I believe that applying our decision in Appeal No. 93672 the question of whether or not the compensable injury extended to the claimant's left knee is a question of fact. I do not find that the great weight and preponderance of the evidence to be contrary to the hearing officer's decision that the compensable injury extended to include the left knee. I would therefore affirm the decision of the hearing officer.

Gary L. Kilgore
Appeals Judge